

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 26, 2011

In the Matter of ROBINSON, Minor.

No. 300648; 300779
St. Clair Circuit Court
Family Division
LC No. 10-000200-NA

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

In this consolidated appeal, respondents-appellants appeal as of right the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(i), (j) and (l). We reverse the best interest findings and remand for proceedings consistent with this opinion.

The trial court did not clearly err in finding that at least one statutory ground for termination of respondents' parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The child who is the subject of this appeal was the sixth child to whom respondent mother's parental rights were terminated and the second child to whom respondent father's parental rights were terminated. The child was removed from respondents' care three days after birth and their parental rights were terminated less than three months later. Respondents argue on appeal their circumstances had significantly changed since termination of parental rights to the child's full sibling more than two years earlier, and the trial court clearly erred in summarily terminating their parental rights to this child and finding immediate termination without an attempt at reunification in the child's best interests.

With regard to termination under § 19b(3)(i), clear and convincing evidence showed respondent mother's parental rights to four of the child's half siblings and one full sibling were terminated for chronic neglect or failure to protect in four separate child protective proceedings conducted between 2000 and 2008, and she failed to benefit from interventions or services offered during those proceedings. Convincing evidence did not show respondent father's parental rights to the child's full sibling were terminated due to chronic neglect, although during the sibling's gestational period he failed to prepare to support the child, and when the sibling was removed at birth did not afford himself of proffered visits or inquire about its well-being. Nevertheless, we conclude that the evidence supported termination of respondent mother's parental rights under § 19b(3)(i), but not respondent father's.

However, the elements of chronic neglect and unsuccessful prior attempts to rehabilitate the parent required for termination in § 19b(3)(i) are subsumed in the much broader § 19b(3)(l), which provides that a previous involuntary termination of parental rights under a proceeding pursuant to MCL 712A.2 is a sufficient ground to terminate parental rights. The opinion and order terminating respondents' parental rights to the child's sibling in another county in 2008 was admitted into evidence, thereby establishing § 19b(3)(l) as a statutory ground for termination of respondents' parental rights to this minor child, and the trial court did not err in terminating their parental rights pursuant to that statutory ground.

Moreover, evidence of another statutory ground, § 19b(3)(j), was used by the trial court as a basis for termination. Respondents introduced evidence showing they desired to change their circumstances since their 2008 termination. Four months before this child's birth, respondent mother completed a 240-hour administrative assistant's course, and during the 2-1/2 months between the child's removal and the termination hearing, respondents, on their own initiative, established independent housing and began attending parenting classes, and respondent mother stabilized her mental health with medication and began weekly counseling. The referee curiously found "The record does not establish that any of the past problems leading to prior termination of the mother's parental rights to previous children have been remedied." We reject the characterization of the record evidence as failing to demonstrate any remediation by respondent mother. Moreover, her efforts were neither short-term nor insignificant. To fail to recognize her changes is to essentially find that this mother serves a life sentence of being deprived her right to parent. Her troubled history from when she was 21 years of age until she was 31 is cause for extreme caution and close supervision in the early days of the child's life. However, that history, by itself, is not grounds for termination. In contrast, we do not have a firm and definite conviction the trial court erred in finding a reasonable likelihood this child would be at risk of harm if returned to respondent father. He had a long criminal history that included an offense since the birth of his last child. The court is more than justified in noting that his changes were less than sustained. While both respondents should be commended for desiring to change and taking initial steps in that direction, more concerted efforts by respondent father immediately after termination of their parental rights to the child's sibling would have weighed more in his favor. The trial court did not err in finding a basis for terminating respondent father's parental rights under § 19b(3)(j).

Regardless of whether statutory grounds for termination existed in this case, the evidence failed to show that termination of respondents' parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The child was removed three days after birth and no evidence of a parent-child bond was presented. However, respondents expressed a desire and took steps to change their circumstances before the termination hearing. Respondent mother's psychological issues were stabilized and she had exerted continuous effort to obtain a skill, even when she had to attend classes on crutches. The evidence supported a singular use of marijuana during her pregnancy, which is concerning but not determinative. There is no evidence of domestic violence since her separation from Chrystal Gonzales. While the father's case is certainly a closer question, the record overwhelmingly demonstrates that the father's familial support is integral to the family, albeit with few financial resources. A review of the evidence on the entire record shows the trial court clearly erred in finding it in the minor child's best interests to terminate respondents' parental rights.

Reversed and remanded for reunification efforts. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens